REMARKS

Favorable reconsideration of the above-identified application, in light of the present amendment and in view of the following discussion, is respectfully requested.

Claims 4-8 have been amended to delete "a step of." Withdrawn claims 10-13 have been canceled. Therefore, claims 1-9 are pending in the present application.

On page 3 of the Office Action, claims 1-7 were rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Pat. No. 6,643,259 (Borella).

According to Borella, when network congestion is recognized by a first network device, a Transmission Control Protocol (TCP) process on the first network device limits a rate at which packets are injected into the network by adjusting a packet rate value. In particular, the TCP process on the first network device limits a value "cwnd" that indicates how many packets are allowed to be circulated in the network. *See* Borella, column 8, lines 34-46.

According to the present invention, as defined by the example of claim 1, communication between a client and server is monitored. If the communication data size in the connection between the client and the server decreases with respect to a recorded maximum data size value, a determination is made that the server is under "high load." In other words, for example, when the load on the server increases, the amount of data forwarded on the communication line decreases. *See* Specification of the Present Invention, Page 20, lines 7-15.

The above-identified feature is recited, for example, in independent claim 1, by the language, "judging, if the communication data size of the connection decreases with respect to the recorded maximum size value, that the server is under a high load."

In light of the foregoing, as defined by independent claim 1, for example, Applicants respectfully submit that the present invention is patentable over Borella, as Borella fails to teach the feature of the present invention identified by the above-quoted language. In the present invention, whether the server is under a high load is determined by the communication data size of the connection between the server and the client, for example. In contrast to the present invention, Borella specifically states that network congestion is determined by the absence of acknowledgement of packets, not by a communication data size, as in the present invention.

Further, the recorded maximum value identified in the language of claim 1 is utilized to assist in determining whether the server is under a high load. In contrast, Borella's "cwnd" value is utilized to assist in a solution to network congestion, that is, to assist in adjusting the rate of packet injection into the network and does not correspond to a maximum value of the present

invention. As explained above, in Borella, the determination of whether the network is congested was accomplished by the absence of packet acknowledgement.

In light of the foregoing, independent claim 1 is patentable over Borella. As dependent claims 2-7 depend from independent claim 1, the dependent claims are patentable over Borella, for at least the reason offered above, in addition to other reasons. For example, as recited by the language of claim 3, communications of a start and end of a connection are recognized to exclude communication data size of the start and end connections from the calculated load. The start and end communication data sizes are typically small and are excluded from the load calculation to improve accuracy. *See* Specification of the Present Invention, page 8, lines 21-26. Borella is silent as to the feature of claim 3.

On page 5 of the Office Action, claims 8-9 were rejected under 35 U.S.C. § 102(b) as being anticipated by European patent No. EP 459,134 A2 (Georgiadis).

In Georgiadis, a balancer process examines utilization values transmitted by monitors of the system. Although Georgiadis does not disclose information pertaining to exactly what information is included within the utilization values, Georgiadis suggests that the utilization values include information pertaining to amounts of time a particular transaction type takes to execute on the computer being monitored. *See* Georgiadis, page 5, lines 34-39. Thus, Georgiadis suggests that computer congestion is determined by monitoring each computer to determine an amount of time each transaction on the computer will take, not by a "communication data size of the connection," as in the present invention.

On page 6 of the Office Action, claim 5 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Borella. As claim 5 depends from independent claim 1, claim 5 via claim 1 is patentable over Borella, as Borella does not teach or suggest the feature of claim 1 identified above. No suggestion of the feature of the present invention is suggested in Borella, as Borella determines network congestion by determining absence of packet acknowledgement.

Consequently, in light of the above discussion and in view of the present amendment, this application is believed to be in condition for allowance and an early and favorable action to that effect is respectfully requested.

If there are any additional fees associated with filing of this Amendment, please charge the same to our Deposit Account No. 19-3935.

Respectfully submitted,

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